

The standard of review under this section is well founded and in this regard see, Kalman v. Kimberly-Clark Corp., 713 F. 2d 760, at 771, 218 USPQ 781, at 789 (1983), where the Court of Appeals for the Federal Circuit held:

“A party asserting that a patent claim is anticipated under 35 USC 102 must demonstrate, among other things, identity of invention. In cases like this, identity of invention is a question of fact...(citation omitted) and one who seeks such a finding must show that each element of the claim in issue is found, either expressly described or under the principles of inherency, in a single prior art reference, or that the claimed invention was previously known or embodied in a single prior art device or practice.”

See ‘464 does not disclose a “ready to eat” food product as provided by the present invention. Rather, See ‘464 is a nutritional supplement which must be added to something or mixed prior to being ingested by the consumer. This is exactly the type of product over which the invention is an improvement.

Consumers today have a tendency to shun supplements and other products, which do not typically fit within the normal dietary patterns. The ready to eat food product of the present invention, provides the consumer with the intended benefit of lowering cholesterol, while at the same time maintaining the convenience of the product in that the product of the present invention does not require the pre-mixing or other step to prepare the supplement prior to consumption.

In addition, there is no disclosure in See ‘464 of the beneficial fiber component being selected from the group consisting of oat flour, oat bran and beta glucan as required by all the independent claims of instant application, as amended. As such, it is suggested that the pending claims, as amended, are not anticipated in view of See and reconsideration and withdrawal of the rejection under See ‘464 is respectfully requested.

Claims 1-3, 11-18 and 20 have been rejected by the Examiner under 35 U.S.C. 102(b) as being anticipated by Tiainen et al (WO 98/13023) in view of its disclosure of “sterols in edible products as cholesterol lowering agents...and a jelling agent...pectin... (Official Action at page 3, first paragraph). The standard of review under this section has already been identified above.

Tiainen et al do not disclose or anticipate the claims, as amended, of the present invention as there is no disclosure of a beneficial fiber component being selected from the group consisting of oat flour, oat bran and beta glucan as required by all the independent claims of instant application as amended in a ready to eat food product useful in lowering cholesterol levels. As such, it is suggested that the pending claims, as amended, are not anticipated in view of Tiainen et al and reconsideration and withdrawal of the rejection under Tiainen et al is respectfully requested.

Claims 1-20 have been rejected by the Examiner under 35 U.S.C. 102(e) as being anticipated by Bell et al (US Pat. 6,365,176) in view of its disclosure of “a nutritional supplement comprising...carbohydrate [barley or psyllium] and sterol [beta-sitosterol, campesterol or stigmasterol] (Official Action at page 3, second paragraph).

The Examiner has correctly indicated that Bell et al is a nutritional supplement. A nutritional supplement is just that, a supplement and not a ready to eat food as required by the present invention. As such, Bell et al do not disclose a ready to eat food product that does not require further processing prior to ingesting the food product.

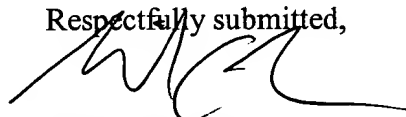
Further, Bell et al do not disclose or anticipate the claims, as amended, of the present invention as there is no disclosure of a beneficial fiber component being selected from the group consisting of oat flour, oat bran and beta glucan as required by all the independent claims of instant application as amended in a ready to eat food product useful in lowering cholesterol levels.

Bell et al, like See represents the exact type of product over which the present invention is an improvement. A ready to eat food product that does not require further preparation and may be ingested straight from the package in which the product is delivered. As such, it is suggested that the pending claims, as amended, are not anticipated in view of Bell et al and reconsideration and withdrawal of the rejection under Bell et al is respectfully requested.

All objections and rejections having been addressed, it is respectfully submitted that the present application is in condition for allowance and an early Notice to that effect is earnestly solicited. The Examiner is encouraged to contact the undersigned in the event any small matters remaining outstanding so as to eliminate the necessity of another action and response.

The Commissioner is hereby authorized to charge any fees associated with this response to our deposit account number 07-0900.

Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS

1. (Amended) A ready to eat consumer food product having the beneficial effect of reducing high cholesterol level ranges comprising;

at least a first beneficial soluble fiber component provided in an amount of approximately 1 to 3 grams per serving size is selected from the group consisting of [psyllium,] oat flour, oat bran, [barley,] and beta-glucan[, guar gum, beet pulp and pectin];

at least a second beneficial component selected from the group consisting of beta sitosterol, stigmasterol, campesterol, ergosterol, beta sitostanol, campestanol, stigmastanol and fatty acid derivatives thereof; and

wherein ingestion of the ready to eat consumer food product containing a combination of said first and second beneficial components provides a serum cholesterol lowering effect.

2. (Amended) A ready to eat consumer food product as recited in claim 1 wherein said first beneficial component comprises between 1 to 25 percent by weight.

3. (Amended) A ready to eat consumer food product as recited in claim 1 wherein said second beneficial component comprises between 1 to 25 percent by weight.

Kindly cancel claim 4 without prejudice or disclaimer.

5. (Amended) A ready to eat consumer food product as recited in claim 1 wherein said ready to eat consumer food product is a ready to eat meal.

Kindly cancel claim 6 without prejudice or disclaimer.

7. (Amended) A ready to eat consumer food product as recited in claim 1 wherein said ready to eat consumer food product is a ready to eat cereal.

Kindly cancel claim 8 without prejudice or disclaimer.

Kindly cancel claim 9 without prejudice or disclaimer.

10. (Amended) A ready to eat consumer food product as recited in claim 1 wherein said ready to eat consumer food product is a fruit snack.

Kindly cancel claim 11 without prejudice or disclaimer.

Kindly cancel claim 12 without prejudice or disclaimer.

Kindly cancel claim 13 without prejudice or disclaimer.

Kindly cancel claim 14 without prejudice or disclaimer.

15. (Amended) A ready to eat consumer food product as recited in claim 1 wherein said ready to eat consumer food product is a bakery product.

16. (Amended) A ready to eat consumer food product as recited in claim 1 wherein said ready to eat consumer food product is a snack product.

17. (Amended) A ready to eat consumer food product for use in reducing LDL cholesterol levels, comprising;

at least a first soluble fiber component provided in an amount of approximately 1 to 3 grams per serving size having a first beneficial health effect selected from the group consisting of [psyllium,] oat flour, oat bran, [barley,] and beta-glucan[, guar gum, beet pulp and pectin];

at least a second sterol based component having a second beneficial health effect, which may be similar to said first beneficial health effect, said first soluble fiber component is provided in at least an equal amount to said second sterol component;

said at least first and second components provided in a particular ratio to create a ready to eat food product that delivers a health benefit of reducing LDL cholesterol levels.

Kindly cancel claim 18 without prejudice or disclaimer.

Kindly cancel claim 19 without prejudice or disclaimer.

20. (Amended) A ready to eat consumer food product for use in reducing total cholesterol levels, comprising;

at least a first soluble fiber component provided in an amount of approximately 1 to 3 grams per serving size having a first beneficial health effect selected from the group consisting of [psyllium,] oat flour, oat bran, [barley,] and beta-glucan[, guar gum, beet pulp and pectin];

at least a second sterol based component having a second beneficial health effect, which may be similar to but distinct in effect from said first beneficial health effect;

said at least first and second components provided in a particular ratio of one to another to create a ready to eat food product that delivers a health benefit of reducing total cholesterol levels.